

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,
Plaintiff,
v.
LUIS EARNEST MORQUECHO,
Defendant.

Case No.: 11cr1495 AJB

**ORDER DENYING DEFENDANT'S
MOTION FOR COMPASSIONATE
RELEASE
(ECF 366)**

This matter comes before the Court on Defendant's Motion received in the mail on February 11, 2021.

Defendant seeks release from custody due to medical conditions and risk factors and the impact of the COVID-19 Pandemic on prison conditions.

Defendants cannot seek compassionate release from the sentencing court until they meet § 3582(c)(1)'s exhaustion requirement. The requirement is satisfied by either "fully exhaust[ing] all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden." *Id.* The only exception is where an attempt to exhaust administrative remedies would be futile and thus the normal exhaustion of administrative remedies is waived. *United States v. Jepsen*, No. 3:19-CV-00073(VLB), 2020 WL

1 1640232, at *3 (D. Conn. Apr. 1, 2020); *United States v. Gonzalez*, No. 2:18-CR-0232-
2 TOR-15, 2020 WL 1536155, at *1 (E.D. Wash. Mar. 31, 2020).


3 Defendant failed to exhaust. The Court therefore lacks jurisdiction to entertain the
4 issues otherwise presented on whether or not “extraordinary and compelling reasons to
5 warrant a reduction in sentence under the applicable policy statements issued by the
6 sentencing commission.” 18 U.S.C. 3582 (c)(1)(A)(i). The policy statements invoke the
7 18 U.S.C. 3553(a) factors. The Defendant bears the burden to establish he is eligible for
8 a sentence reduction. *United States v. Jones*, 836 F.3d 896,899 (8th Cir. 2016).

9 Even if exhaustion were waived, the Court finds it notable that no evidence was
10 presented to substantiate the claimed health risk or other bases for the Motion. Only
11 conclusory statements by Defendant, and that won’t sustain Defendant’s burden

12 Based on the foregoing, the Motion is **DENIED** without prejudice.

13 IT IS SO ORDERED.

14 Dated: February 12, 2021

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16 Hon. Anthony J. Battaglia
17 United States District Judge
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